

REMARKS

Claims 1-29 are pending in this application. By this Amendment, claim 10 is amended merely to change the dependency.

Entry of the amendment is proper under 37 C.F.R. §1.116 since the amendment is merely to have claim 10 depend from claim 8, which specifically recites the DRC channel. Thus, no further search and/or consideration is necessary by the Examiner. Entry is therefore proper under 37 C.F.R. §1.116.

The present application is a final rejection. However, as stated on page 10 of the Office Action, applicant's previous arguments are moot in view of a new ground of rejection. Applicant's Amendment filed on May 12, 2004 did not necessitate the new grounds for rejection. That is, based on the arguments set forth in the May 12 response, Examiner Nguyen has withdrawn the outstanding rejection, conducted a new search and now applies a newly-cited reference, namely Padovani. Thus, the present Office Action should not be a final rejection. Therefore, applicant respectfully requests that the final rejection be withdrawn.

The Office Action rejects claim 1-29 under 35 U.S.C. §103(a) over U.S. Patent 6, 574,211 to Padovani et al. (hereafter Padovani) in view of U.S. Patent 6,542,736 to Parkvall et al. (hereafter Parkvall). The rejection is respectfully traversed.

Independent claim 1 recites at least one base transceiver system providing to a mobile station load information that is a receiving probability of a signal, the mobile station deciding a forward data transmission rate according to a channel state of the signal received from the base transceiver system, the mobile station selecting a certain base transceiver system with which the

mobile station will communicate using the provided load information and the decided forward data transmission rate.

The Office Action asserts that Padovani discloses at least one base transceiver providing to a mobile station load information that is a receiving probability of a signal. The Office Action cites Padovani's Figure 4-5; column 4, lines 11-43 and column 32, lines 38-67. However, as may be seen in this discussion, Padovani discloses that upon receipt of a paging message from a base station the mobile station measures the signal to noise and interference ratio (C/I) of forward link signals and selects the best base station using a set of parameters that comprise the present and previous C/I measurements. This does not correspond to at least one base transceiver system providing to a mobile station load information that is a receiving probability of a signal. Rather, the mobile station merely measures signal to noise and interference ratio of forward link signals. The measurement of these signals is different than the claimed at least one base transceiver system providing to a mobile station load information that is a receiving probability of a signal. Parkvall does not teach or suggest these features of independent claim 1 as set forth in the May 12 Amendment.

Independent claim 1 further recites the mobile station selecting a certain base transceiver system with which the mobile station will communicate using the provided load information and the decided forward data transmission rate. Since Padovani does not teach or suggest the at least one base transceiver system providing to a mobile station load information that is a receiving probability of a signal, there is no suggestion that Padovani may teach or suggest "the mobile station selecting a certain base transceiver system . . . using the provided load information." As

such, Padovani and Parkvall do not teach or suggest all the features of independent claim 1. Thus, independent claim 1 defines patentable subject matter.

Independent claim 11 recites receiving probability information and channel state information through a forward link, establishing a forward data transmission rate corresponding to the channel state information, and selecting a corresponding base transceiver system in which the estimated forward data transmission rate and a value proportioned to the receiving probability in an active set become maximum. Similar as set forth above, the Office Action asserts that Padovani (at Figure 4-5; column 4, lines 11-34 and column 32, lines 53-67) discloses receiving probability information and channel state information through a forward link. However, these sections merely disclose that the base station may measure signal to noise interference ratio of forward link signals. There is no suggestion for receiving probability information and channel state information through a forward link. Additionally, there is no teaching or suggestion for selecting a corresponding base transceiver system in which the estimated forward data transmission rate and a value proportioned to the receiving probability in an active set become maximum, as recited in independent claim 11. Thus, independent claim 11 defines patentable subject matter at least for this reason.

Independent claim 21 recites receiving load information corresponding to each of a plurality of base transceiver systems, deciding a data transmission rate based on channel state information, selecting a base transceiver system from among the plurality of base transceiver systems using the received load information and the data transmission rate. The Office Action asserts that Padovani (at Figure 5 and column 4, lines 11-43; and column 32, lines 53-67)

discloses receiving load information corresponding to each of the plurality of base transceiver systems. For similar reasons as set forth above, Padovani does not teach or suggest these features as Padovani merely discloses that the mobile station may measure signal to noise and interference ratio. Therefore, Padovani does not receive load information corresponding to each of a plurality of base transceiver systems. Padovani further does not teach or suggest selecting a base transceiver system from among the plurality of base transceiver systems using the received load information and the data transmission rate. Parkvall does not teach these features missing from Padovani as set forth in the May 12 Amendment.

Accordingly, each of independent claims 1, 11 and 21 defines patentable subject matter. Claims 2-10 depend from claim 1, claims 12-20 depend from claim 11 and claims 22-29 depend from claim 21 and therefore define patentable subject matter at least for this reason. In addition, the dependent claims also recite features that further and independently distinguish over the applied references.

For example, many of the dependent claims relate to the receiving probability. The Office Action, while asserting that Padovani teaches a receiving probability of a signal, then relies upon Parkvall to recite features regarding the receiving probability. Thus, it is unclear regarding the Office Action's assertion of which reference allegedly discloses the receiving probability provided to a mobile station. It is clearly improper for the Office Action to rely on Padovani as disclosing providing load information that is a receiving probability of a signal and then to rely on Parkvall with regard to more specific features of the receiving probability since Parkvall does not teach or suggest the features regarding providing load information that is a

receiving probability of a signal. Parkvall does not teach or suggest the respectively claimed features regarding the receiving probability as set forth in the dependent claims. See, for example, dependent claims 2-6, 12-18, 22-24, 26 and 28-29.

Additionally, dependent claim 5 (and similarly dependent claim 15) recites that the load information is transmitted to the corresponding mobile station using a synchronized control channel, asynchronous control channel or dedicated channel. The Office Action appears to assert that Padovani disclose providing the load information, but then relies upon Parkvall to show the features of dependent claims 5 and 15. Thus, the rejection based on Padovani and Parkvall is not possible as set forth in the Office Action.

Furthermore, dependent claim 6 recites multiplying the load information provided for each base transceiver system by the forward data transmission rate determined for each base transceiver system, comparing values calculated for the respective base transceiver system with one another, and selecting the base transceiver system having the largest value according to a result of comparison. For similar reasons as set forth above, Padovani and Parkvall do not teach or suggest these features as they do not relate to use of the claimed multiplying the load information provided for each base transceiver system by the forwarding data transmission rate determined for each base transceiver system. Thus, dependent claim 6 (and similarly dependent claim 26) defines patentable subject matter at least for this reason.

Furthermore, dependent claim 10 recites the base transceiver system checking the mobile station that completes the DRC channel transmission until $((\text{present slot time}) - 1 - (\text{present slot time mod (DRC channel length)}))$. The Office Action relies on Parkvall's Figure 4, 6-12 and

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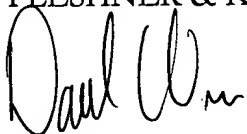
column 7, lines 27-43 for these reasons. However, these features of Parkvall do not relate to those recited in dependent claim 10. Thus, dependent claim 10 defines patentable subject matter at least for this reason.

CONCLUSION

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance. Favorable consideration and prompt allowance of claims 1-29 are earnestly solicited. If the Examiner believes that any additional changes would place the application in better condition for allowance, the Examiner is invited to contact the undersigned attorney, **David C. Oren**, at the telephone number listed below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this, concurrent and future replies, including extension of time fees, to Deposit Account 16-0607 and please credit any excess fees to such deposit account.

Respectfully submitted,
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